

DCN 13626

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

TO: (Name and Address of Defendant)

The Defense Base Closure and Realignment Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

05 - 11821 GAO

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exciusiv: of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

SARAH A. THORNTON
CLERK

SEP 07 2005

DATE

BY DEPUTY CLERK

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 388, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # 256
AMOUNT \$ 256
SUMMARY ISSUED Y-11
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. M
DATE 9-7-65

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

CIVIL ACTION
NO. 05-CV-

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. Id.

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. Id. The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. Id. § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

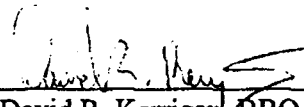
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
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Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

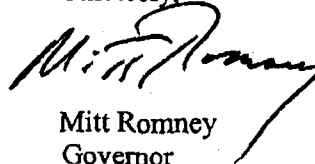
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05 - 11821 GAO

TO: (Name and Address of Defendant)

James H. Bilbray
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

¹) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

EXPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # _____
AMOUNT \$ 250
SUMMARY ISSUED 4-11
LOCAL RULE 4.1
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. M
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

CIVIL ACTION
NO. 05-CV-

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. Id. The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. Id. § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

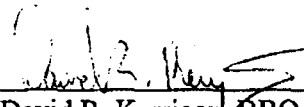
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

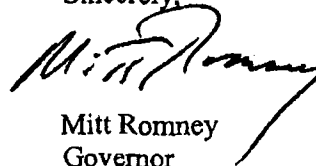
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,


Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

TO: (Name and Address of Defendant)

05 - 11821 GAO

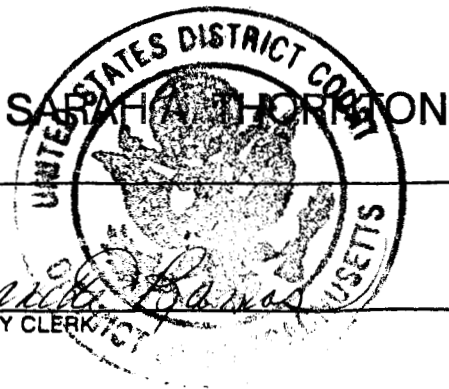
Philip Coyle
Base Realignment and Closure Commission
Polk Building Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, excusiv: of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.



SEP 07 2005

CLERK

DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

¹) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # 250
AMOUNT \$ 250
SUMMIT ISSUED 4-11
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. M
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

CIVIL ACTION
NO. 05-CV-

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. Id.

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").
10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.
11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.
12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.
13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. Id. The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. Id. § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

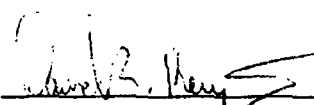
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

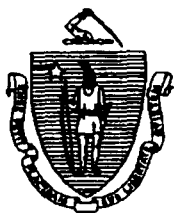
- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

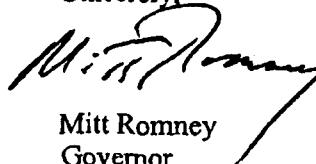
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05 - 11821 GAO

TO: (Name and Address of Defendant)

Harold W. Gehman, Jr.
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.



SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # _____
AMOUNT \$ 250
SUMMER ISSUED 4-11
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. M
DATE 9-7-65

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

CIVIL ACTION
NO. 05-CV-

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. *Id.* The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. *Id.* § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

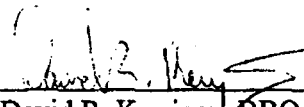
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

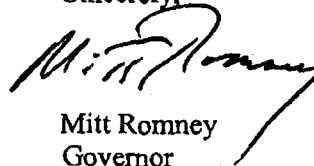
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

^{v.}
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

TO: (Name and Address of Defendant)

James V. Vinson
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

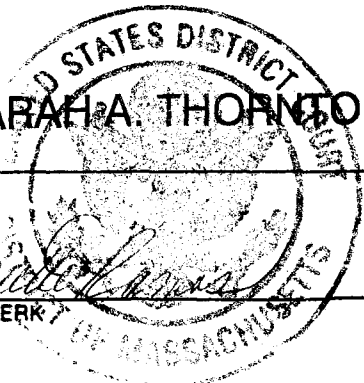
05 - 11821 GAO

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.



SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

¹) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

16. RECEIPT # 256
AMOUNT \$ 256
SUMMARY ISSUED 7-11
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. 7-15
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

CIVIL ACTION
NO. 05-CV-

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. Id. The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. Id. § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

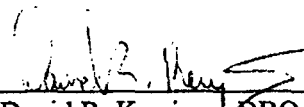
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

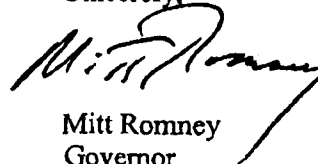
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

V.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05 - 11821 GAO

TO: (Name and Address of Defendant)

James T. Hill
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____

- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____

- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 388, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # _____
AMOUNT \$ 250
SUMMIT ISSUED 1-11
LOCAL RULE 4.1
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. _____
DATE 9-7-65

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

CIVIL ACTION
NO. 05-CV-

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. Id.

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. Id. The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. Id. § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

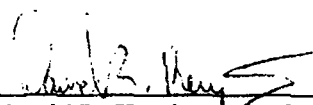
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

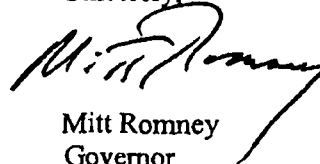
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05-11821 GAO

TO: (Name and Address of Defendant)

Lloyd W. Newton
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.



SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (incl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # 256
AMOUNT \$ 256
SUMMARY ISSUED 4-11
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. M
DATE 9-7-65

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

CIVIL ACTION
NO. 05-CV-

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. *Id.* The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. *Id.* § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

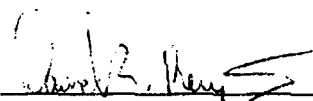
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

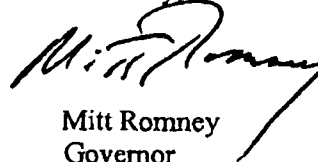
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

TO: (Name and Address of Defendant)

Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

05 - 11821 GAO

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

CLERK

SARAH A. THORNTON

BY DEPUTY CLERK

DATE

SEP 07 2005

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. Veterans) <input type="checkbox"/> Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Other Contract Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

16. RECEIPT # 236
AMOUNT \$ 236
SUMMIT ISSUED 7-11
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. m
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

CIVIL ACTION
NO. 05-CV-

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").
10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.
11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.
12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.
13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. *Id.* The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. *Id.* § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

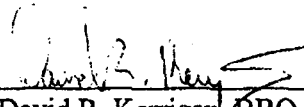
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

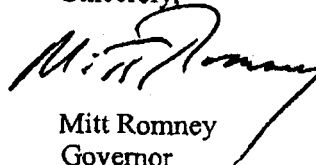
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05 - 11821 GAO

TO: (Name and Address of Defendant)

Samuel K. Skinner
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

SARAH A. THORNTON

CLERK

BY DEPUTY CLERK

SEP 07 2005

DATE

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. Veterans) Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

EXEMPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

RECEIPT # _____
AMOUNT \$ 250
SUMMARY ISSUED 7-11
LOCAL RULE 4.1
WAIVER FORM _____
MCF ISSUED _____
BY DFTY. CLK. M
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

CIVIL ACTION
NO. 05-CV-

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. *Id.*

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").

10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.

13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. *Id.* The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. *Id.* § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove *Otis and Barnes ANGB* from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

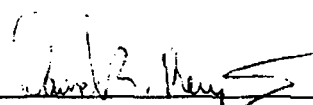
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL


David R. Kerrigan, BBO # 550843
Thomas A. Barnico, BBO # 030040
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2050, 3380

Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,

Mitt Romney
Governor

United States District Court

DISTRICT OF Massachusetts

W. Mitt Romney, in his official capacity as Governor
of the Commonwealth of Massachusetts

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

v.
Donald H. Rumsfeld, in his official capacity as Secretary of
Defense of the United States of America; The Defense Base Closure
and Realignment Comm'n; Anthony J. Principi, as Chairman and
James H. Bilbray, Philip Coyle, Harol W. Gehman, Jr., James V.
Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
Sue E. Turner as members of the Defense Base Closure and
Realignment Comm'n

05 - 11821 GAO

TO: (Name and Address of Defendant)

Sue E. Turner
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas A. Barnico
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

CLERK

DATE

UNITED STATES DISTRICT COURT
SABAH A. THORNTON

SEP 07 2005

BY DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

W. Mitt Romney, in his official capacity as Governor of the Commonwealth of Massachusetts,

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas A. Barnico, Assistant Attorney General
One Ashburton Place, Boston, MA 02108

DEFENDANTS

Donald H. Rumsfeld, Secretary of Defense, Defense Base Closure and Realignment Comm'n, Anthony J. Principi, Chairman, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, as members of the Defense Base Closure and Realignment Comm'n
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Attorney Michael Sullivan, One Courthouse Way,
Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. Veterans) <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Defendants' actions in recommending closure of Otis Air National Guard Base without obtaining approval of Governor violates U.S. Const. art. 1, § 8, cl. 16, 32 U.S.C. § 104 and 10 U.S.C. § 18238

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) W. Mitt Romney v. Donald H. Rumsfeld

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Barnico, Assistant Attorney General

ADDRESS One Ashburton Place, Boston, MA 02108

TELEPHONE NO. (617) 727-2200, ext. 3380

16. RECEIPT # 256
AMOUNT \$ 256
SUMMARY ISSUED 4-11
LOCAL RULE 4.1
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MCF ISSUED
BY DPTY. CLK. 4
DATE 9-7-15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

W. MITT ROMNEY, in his official capacity as
Governor of the Commonwealth of Massachusetts,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense of the United States of
America,

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION,

ANTHONY J. PRINCIPI, in his official capacity as
Chairman of the Defense Base Closure and
Realignment Commission, and

JAMES H. BILBRAY, PHILIP COYLE, HAROLD
W. GEHMAN, JR., JAMES V. VINSON, JAMES
T. HILL, LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER, in their official
capacities as members of the Defense Base Closure
and Realignment Commission,

Defendants.

CIVIL ACTION
NO. 05-CV-

05 - 11821 GAC

COMPLAINT

1. This complaint arises from actions of the Department of Defense and the Defense Base Closure and Realignment Commission ("BRAC Commission") recommending the closure of Otis Air National Guard Base in Barnstable, Massachusetts, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without seeking or

obtaining the approval of the Governor of the Commonwealth of Massachusetts. The plaintiff Governor has declined to consent to such closure and movement of aircraft and seeks (1) a temporary restraining order and a preliminary injunction enjoining the defendants, pending a final decision by this Court on all of plaintiff's claims and until further order of the Court, from transmitting a final report to the President of the United States, due on September 8, 2005, pursuant to the Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (West 1998, 2005 Supp.) (the "BRAC Act"), that includes the recommendation to close Otis Air National Guard Base, the movement of fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts and the movement of fifteen A-10 aircraft from Barnes ANGB to other States, without the consent of the Governor and (2) a declaration that such a report violates the United States Constitution, Article I, § 8, cl. 16, and 32 U.S.C. § 104, and 10 U.S.C. § 18238.

PARTIES

2. Plaintiff W. Mitt Romney (the Governor) is the duly elected Governor of the Commonwealth of Massachusetts (the Commonwealth). The Governor is the "commander-in-chief" of the "military forces" of the Commonwealth and has the power under its constitution "to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws." Massachusetts Constitution Pt. 2, c. 2, § 1, art. 7. Governor Romney is the commander-in-chief of the Massachusetts National Guard. Id.

3. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense (DoD). He is sued in his official capacity.

The BRAC Act sets forth the process by which military bases in the United States and its territories are identified for closure or realignment. Pursuant to the BRAC Act, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the BRAC Commission. He is authorized to oversee, direct, and implement the closure or realignment of military bases pursuant to the BRAC process.

4. Anthony J. Principi is the Chairman of the BRAC Commission. He is sued in his official capacity.

5. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

JURISDICTION AND VENUE

6. This action arises under the Militia Clause of the United States Constitution, art. 1, § 8, cl. 16, and the following federal statutes: 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

7. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of this action is situated within this judicial district.

FACTUAL ALLEGATIONS

The Recommendations of the Secretary

9. On May 13, 2005, Secretary Rumsfeld transmitted to the BRAC Commission the Department of Defense Base Closure and Realignment Report ("BRAC DoD Report").
10. The BRAC DoD Report was prepared by the Department pursuant to the BRAC Act.
11. The BRAC DoD Report contains the Department's recommendations to realign or close military installations within the United States and its territories.
12. While preparing its BRAC DoD Report, the Department considered the requirements of installations used by the Air National Guard of the United States.
13. The Secretary recommended closure of Otis Air National Guard Base (Otis ANGB) and the distribution of fifteen F-15 Primary Assigned Aircraft (PAA) of the 102d Fighter Wing to Air Guard Stations in Florida and New Jersey.

The BRAC Commission Report and Action by the President and Congress

14. Pursuant to Section 2914(d)(1) of the BRAC Act, the BRAC must transmit its report, "containing its findings and conclusions based on a review and analysis of the Secretary's recommendations," to the President by September 8, 2005. *Id.* The President has until September 23, 2005, to review the recommendations of the Secretary and the Commission and prepare a report containing his approval or disapproval of the Commission's recommendations in their entirety. *Id.* § 2914 (e)(1). If the President disapproves the Commission's

recommendations in their entirety, the Commission may prepare a revised list of recommendations and transmit those to the President by October 20, 2005. Id. § 2914 (e)(2). If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. Id. § 2914 (e)(3). If the President approves either the original or revised recommendations, he must send the approved list and a certification of approval to Congress. Id. § 2903 (e). If Congress does not enact a resolution disapproving the approved recommendations in their entirety within 45 days after receiving the President's certification of approval, the Secretary must carry out all of the recommendations. Id. § 2904 (a).

15. In each of the four previous BRAC processes—occurring in 1988, 1991, 1993, and 1995— the President approved the BRAC Commission's recommendations in their entirety.

16. Congress has never disapproved the President's base closure and realignment decisions.

17. On August 26, 2005, the BRAC announced that its report to the President will recommend that (1) Otis ANGB be closed, (2) the 102nd Fighter Wing's fifteen F-15 PAA aircraft be moved to Barnes Air National Guard Base in Westfield, Massachusetts; and (3) the 104th Fighter Wing's fifteen A-10 PAA be moved from Barnes ANGB to other States.

Otis and Barnes ANGB

18. Otis ANGB is located in Barnstable, Massachusetts, within the Massachusetts Military Reservation and wholly within the Commonwealth.

19. Approximately 1000 military positions are currently allotted to the 102d Fighter Wing at Otis NGB. Approximately 1000 military positions are currently allotted to the 104th Fighter Wing as Barnes ANGB. A substantial number of the members of these wings have

combat and homeland defense experience. The 102nd and 104th Fighter Wings constitute a well-trained, mission-ready state military force available to the Governor to perform state activity duty missions dealing with homeland security, natural disasters and other state missions.

20. The closure of Otis ANGB and the movement of the fifteen A-10 PAA of the 104th Fighter Wing at Barnes ANGB and related actions will deprive the Governor of a significant amount of the total strength of the Massachusetts Air National Guard and will reduce the strength of Massachusetts military forces.

21. These actions will deprive the Governor and the Commonwealth of a key joint base of operations possessing current and future military capabilities for homeland security missions throughout the Northeast United States.

22. The 102nd Fighter Wing at Otis ANGB and the 104th Fighter Wing at Barnes ANGB are organized as units of the Massachusetts Air National Guard (state) and Air Combat Command (federal).

23. The recommendations of the BRAC Commission regarding Otis and Barnes, if implemented, would constitute a change in the branch, organization or allotment of the units.

24. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC DoD Report to the BRAC Commission and the BRAC Commission's recommendations regarding Otis ANGB and Barnes ANGB, more than half of the forces there were not and currently are not in active federal service.

25. The recommendations of the BRAC Commission regarding Otis ANGB and Barnes ANGB constitute a relocation or withdrawal of a unit of the Air National Guard.

26. At no time during the 2005 BRAC process has Secretary Rumsfeld requested or

obtained the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts Air National Guard at issue.

27. At no time during the 2005 BRAC process has any authorized representative of Secretary Rumsfeld, the Department, or the BRAC Commission requested or obtain the approval of Governor Romney or his authorized representatives to withdraw or change the branch, organization or allotment of the units of the Massachusetts ANG at issue.

28. On September 1, 2005, Governor Romney sent a letter to Secretary Rumsfeld and Chairman Principi stating that he has not consented to the closure of Otis ANGB or the reassignment of the aircraft of the 102nd or 104th Fighter Wings. A copy of Governor Romney's letter is attached to this complaint as Exhibit A.

RIPENESS FOR JUDICIAL REVIEW

29. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his obligation to make recommendations with respect to the 2005 round of realignments and closure of military installations. No further action by the Secretary or the Department is required before Otis ANGB is closed and the fifteen A-10 PAA from Barnes ANGB are ordered moved.

30. Pursuant to the military base closure and realignment process set forth in the BRAC Act, the BRAC Commission has finally and completely fulfilled its reporting requirements with respect to the 2005 round of realignments and closure of military installations, save for its duty to transmit its report to the President by September 8, 2005. No further action by the BRAC Commission is required before Otis ANGB is closed and the fifteen A-10 PAA

from Barnes ANGB are moved.

IRREPARABLE HARM

31. The Governor's right to withhold consent to action to close, relocate, realign, withdraw, deactivate, or change the branch, organization or allotment of Otis ANGB and the 15 A-10 aircraft at Barnes ANGB has been nullified by the recommendations of the Secretary and the BRAC Commission.

32. Neither the President nor Congress may remove Otis and Barnes ANGB from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them. The President must act by September 23, 2005.

33. Absent a temporary restraining order, the harm as alleged herein will be irreparable. The recommendations of the Commission would nullify the power of the Governor to withhold his consent, deprive him of a vital homeland security asset, degrade his ability to defend the security of the citizens of the Commonwealth, and deter enlistments and re-enlistments in the Massachusetts Air National Guard.

Absent a temporary restraining order, and after action by the President on or before September 23, 2005, judicial review of the report of the Commission may be contested by the United States under Dalton v. Specter, 511 U.S. 462 (1994).

FIRST CLAIM FOR DECLARATORY RELIEF (MILITIA CLAUSE)

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33, above.

35. Article I, § 8, cl. 16, authorizes Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

36. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

37. Pursuant to Article I, § 8, cl. 16, no base, branch, organization or allotment of a National Guard unit not then in federal service and located entirely within a State may be closed or materially changed by the Secretary or the Commission without the consent of the Governor of that State.

38. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated the Militia Clause.

SECOND CLAIM FOR DECLARATORY RELIEF (32 U.S.C. § 104)

39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38, above.

40. Title 32 U.S.C. § 104(a) provides that "each State . . . may fix the location of the units and headquarters of its National Guard."

41. Title 32 U.S.C. § 104(c) provides that "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor."

42. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

43. The Commission, in recommending that Otis ANGB be closed and that the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 32 U.S.C. § 104.

THIRD CLAIM FOR DECLARATORY RELIEF (10 U.S.C. § 18238)

44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43.

45. Title 10 U.S.C. § 18238 provides: "A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

46. The National Guard is the militia reserved to the States by Article I, § 8, cl. 16.

47. The Commission, in recommending that Otis ANGB be closed and the PAA at issue at Otis and Barnes ANGB be moved, and the Secretary, in proposing to take action to close Otis ANGB, have violated 10 U.S.C. § 18238.

PRAYERS FOR RELIEF

WHEREFORE, Governor Romney requests that the Court grant the following relief:

- a. temporarily restrain the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;
- b. preliminarily enjoin the Commission, Chairman Principi, and the BRAC

Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005;

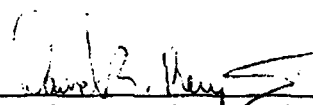
- c. permanently enjoin the Commission, Chairman Principi, and the BRAC Commissioners from including recommendations to close Otis ANGB, move fifteen F-15 aircraft from Otis ANGB to Barnes Air National Guard Base in Westfield, Massachusetts, and move fifteen A-10 aircraft from Barnes to other States in their final report and recommendations to be transmitted to the President on or before September 8, 2005.
- d. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated the Militia Clause of the United States Constitution;
- e. declaring that the Commission, in recommending that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 32 U.S.C. § 104;
- f. declaring that the Commission, in recommending that Otis ANGB be closed,

fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, or otherwise taking action to accomplish these ends without the consent of the Governor, has violated 10 U.S.C. § 18238;

- g. declaring that the challenged portions of the BRAC DoD report are null and void;
- h. declaring that the portion of the BRAC Report that recommends that Otis ANGB be closed, fifteen F-15 aircraft be moved from Otis ANGB to Barnes ANGB, and fifteen A-10 aircraft at Barnes ANGB be moved to other States, is null and void;
- i. enjoining the Secretary from taking any action to close Otis ANG, move the fifteen F-15 aircraft from Otis ANGB to Barnes ANGB, or move the fifteen A-10 aircraft at Barnes ANGB to other States; and
- j. awarding such further relief as the Court deems appropriate.

W. MITT ROMNEY
GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS

By his attorneys,
THOMAS F. REILLY
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Dated: September 7, 2005



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 1, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20310-1000

The Honorable Anthony J. Principi, Chairman
Base Realignment and Closure Commission
Polk Building, Suite 600
2521 South Clark Street
Arlington, VA 22202

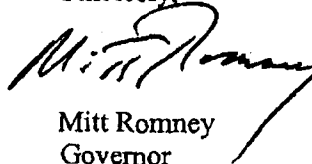
Dear Secretary Rumsfeld and Chairman Principi:

I am writing to state that I have not consented to the following:

- (1) The Department of Defense's recommendation to close Otis Air National Guard (ANG) Base and move the 102nd Fighter Wing's aircraft to bases in other states;
- (2) The BRAC Commission's recommendation to move the 102nd Fighter Wing's 18 F-15 aircraft from Otis ANG Base to Barnes ANG Base and close Otis ANG Base; and
- (3) The BRAC Commission's recommendation to move the 104th Fighter Wing's 15 A-10 aircraft from Barnes ANG base to other states.

Because I have not consented to the closure of Otis ANG Base, the reassignment of the 102nd Fighter Wing's aircraft, or the reassignment of the 104th Fighter Wing's aircraft, these recommendations appear to violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(c), which require gubernatorial consent for such actions.

Sincerely,



Mitt Romney
Governor